



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 22-01348
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 24, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 6, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on November 2, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 14, 2022, and he did not respond within the deadline. The case was assigned to me on July 24, 2023. The Government exhibits included in the FORM, marked as Items 1 through 7, are admitted in evidence without objection.

Findings of Fact

Applicant is a 35-year-old employee of a government contractor for whom he has worked since December 2018. He has attended several vocational or online colleges but has not earned a degree or certificate. He has been married since 2014, but he has lived separate and apart from his spouse without being legally separated since about 2020. He has three children, ages 11, 9, and 4. He also had a daughter who passed away in a car accident in July 2015. He served with the Virginia National Guard from 2010 until 2017 and has since served with the Maryland National Guard. (Items 1, 7)

In the SOR, the Government alleged Applicant's 16 delinquent debts totaling approximately \$36,000 (SOR ¶¶ 1.a through 1.p). These delinquencies consist of the following: car loans (SOR ¶¶ 1.a and 1.b); child support (SOR ¶ 1.c); medical debts (SOR ¶¶ 1.d, 1.e, 1.g, 1.j, 1.n, and 1.p); student loans (SOR ¶¶ 1.i, and 1.k through 1.m); a credit card (SOR ¶ 1.f); and phone bills (SOR ¶¶ 1.h and 1.o). He admitted the SOR allegations except for those in SOR ¶¶ 1.o and 1.p, which he denied. His admissions are adopted as findings of fact. All the SOR allegations are established through his admissions and the Government's credit reports. Most of the SOR debts became delinquent between November 2017 and June 2020. (Items 2, 4-6)

Applicant settled the debt in SOR ¶ 1.f through voluntary payments before the SOR was issued. He provided documentary corroboration to that effect to the DOD investigator during his April 2022 security interview. Prior to the SOR being issued, he made a payment arrangement with the creditor of the debt in SOR ¶ 1.b to pay \$249 per month. He provided documentary corroboration of this arrangement to the DOD investigator, but he has not provided documentary corroboration that he has made these payments. The Government's March 2022 credit report reflects a balance on this account that is only about \$20 less than the balance on the 2020 Government credit report, so he does not appear to be complying with those payment arrangements. (Items 3-7)

Applicant claimed that he settled the debts in SOR ¶¶ 1.i and 1.l before the SOR was issued. However, he has not provided documentary corroboration that he settled these accounts. He claimed that he is paying an additional \$50 per month towards his arrearage on the debt in SOR ¶ 1.c, but he has not provided documentary corroboration of this assertion. For the remainder of the SOR debts he admitted, he claimed that he will either settle or make payment arrangements on those accounts. He provided no information about the basis for his denial of SOR ¶¶ 1.o and 1.p. (Items 2, 7)

Applicant fell behind on his debts after his daughter passed away in 2015, and his spouse could not work because of her grief. He became the sole earner and could not make ends meet. He was unemployed for about a year from 2013 until 2014. He was also placed on unpaid leave with his current employer from November 2021 until January 2022 because his security clearance had "expired." According to the information he provided to the investigator during his April 2022 security interview, he spends more money each month than he earns, but stays afloat by borrowing money

from his parents every month or so. Applicant did not respond to the FORM, so more recent information about his finances is not available. (Items 3, 7)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective within DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a number of delinquent debts, many of which are several years old. The above disqualifying conditions are raised.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Except for the debt in SOR ¶ 1.f, Applicant's financial delinquencies are ongoing and therefore recent. He has not provided documentary evidence that he has resolved or is resolving the remainder of his SOR debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). The evidence does not show that the debts are resolved or are under control. He does not make sufficient money to cover his expenses each month, so I cannot find that his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's delinquencies were caused by unemployment, a separation, and the untimely death of his daughter in 2015. These causes were beyond his control. However, he must also show that he acted responsibly under the circumstances with respect to these debts. He has not. Except for one SOR debt, he has not provided sufficient evidence that he has resolved or is resolving the SOR debts. AG ¶ 20(b) does not fully apply. The lack of resolution of his SOR debts also means that AG ¶ 20(d) does not apply.

Applicant arguably disputed the debts in SOR ¶¶ 1.o and 1.p by denying them in his Answer to the SOR. However, as he provided no basis for his denial, he has not shown that the basis for his dispute is reasonable. AG ¶ 20(e) does not apply. Notwithstanding the debt in SOR ¶ 1.f, none of the mitigating conditions fully apply. The debt in SOR ¶ 1.f has been mitigated pursuant to AG ¶ 20(b) and AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.p:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge